

THE LAUTENBERG AMENDMENT

The Lautenberg Amendment became law on September 30, 1996. This Web page incorporates Department of Defense and Department of Army guidance. The Lautenberg Amendment is a supplement to the Gun Control Act of 1968. The Amendment makes it a felony for anyone convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. It is also a felony for any person to sell or otherwise dispose of a firearm to anyone known to have such a conviction.

To whom does the law apply? The law applies to all soldiers throughout the world who have been convicted of a “misdemeanor crime of domestic violence.” The law also applies to anyone who issues or sells a weapon to someone with a qualifying conviction. Accordingly, if a soldier who has been convicted of a misdemeanor crime of domestic violence is issued a military weapon, both the soldier and the commander who knew of the conviction and yet authorized issuance of a weapon would be in violation of the law. Both Army issue and privately owned weapons fall within the scope of the law.

When does the law apply? The Amendment has a six-part test (see below) for determining whether an individual has committed a “misdemeanor crime of domestic violence.” In order for the Amendment to apply to an individual, that individual must have been convicted of a misdemeanor crime, the offense must have involved the use or attempted use of physical force or the threatened use of a deadly weapon, and the individual must have had a familial or family-like relationship with the victim. The three remaining portions of the six-part test are whether the individual was represented by an attorney, whether the case was tried before a jury, and whether the conviction has been expunged or the individual pardoned. Of particular note to soldiers, the Lautenberg language does **NOT** apply to summary court-martial convictions, imposition of nonjudicial punishment (Article 15), or deferred prosecutions (or similar alternative disposition) in a civilian court.

What should soldiers do? Soldiers who are concerned that the Amendment applies to them should contact their former attorney or the Legal Assistance Office (242-5083/4) for an appointment for help in determining their legal status. A legal assistance attorney can not only help soldiers determine their status, but can also assist them in efforts to have records expunged or to obtain pardons from applicable state governors. The soldier should attempt to get a record of the conviction prior to the appointment. Additionally, if soldiers are pending misdemeanor charges in civilian court systems for domestic violence, a legal assistance attorney can advise them about the impact of a conviction and any options available for deferred adjudication or alternate resolution.

Why should soldiers seek legal assistance? Depending on when the domestic violence occurred, the related conviction may be the basis for separation from the Army. The conviction also may be the basis for other administrative actions, such as reclassification or reassignment. Attempting to get a conviction expunged or pardoned may be a lengthy process, so soldiers who are concerned should make an appointment as soon as possible. The Legal Assistance Office can provide soldiers with bills of sale and powers of attorney to sell or transfer privately owned weapons to authorized individuals.

What should commanders do? If a commander knows or has reasonable cause to believe a soldier has been convicted of a misdemeanor crime of domestic violence, the commander should not issue government-owned or privately-owned firearms or ammunition to that soldier. If the soldier has an issued weapon and/or ammunition, the commander should retrieve it immediately, suspend the soldier's authority to possess firearms or ammunition, and advise the soldier to dispose of privately-owned firearms and ammunition lawfully. The commander should detail the soldier to duties that do not require the bearing of weapons or ammunition. No adverse action may be taken

solely on the basis of a soldier's inability to possess a weapon if the act of domestic violence leading to the conviction occurred on or before September 30, 1996. Commanders may initiate adverse action (e.g. bar to reenlistment, administrative elimination) if the act of domestic violence occurred after September 30, 1996 after providing a soldier reasonable time to seek expunction or a pardon. If a soldier indicates that he does not know whether he has a qualifying conviction, the commander should grant the soldier a reasonable amount of time to make an inquiry to appropriate authorities, but should suspend the soldier's authority to possess firearms and ammunition during the period granted to conduct the inquiry. In all cases, the commander should consult the Staff Judge Advocate's trial counsel (242-5081) to ensure that the law applies to a soldier before action is taken to comply with the law.

How will the Army discover qualifying convictions? Commanders will notify all soldiers that it is unlawful to possess firearms and ammunition if they have a conviction of a misdemeanor crime of domestic violence. Commanders will conduct local unit personnel files checks and will report through command channels to HQDA (DAPE-MPE) soldiers known to have qualifying convictions and soldiers reasonably believed to have such convictions. Local unit personnel files are the Informational Personnel Files maintained under AR 25-400-2 in the Modern Army Record Keeping System (MARKS) Regulation, Table B-91 FN 640a. Those files are also known as Service Members Information Files or "SMIF" files.

Based on an article by LTC Len Kachinsky Reserve Judge Advocate

Conviction of a "misdemeanor crime of domestic violence" as defined in the amendment does not include a summary court-martial conviction or imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in a civilian court. The recent amendment should not be construed to apply to major military weapons systems or "crew served" military weapons and ammunition (tanks, missiles, aircraft, etc.) absent an opinion from the Department of Treasury to the contrary. The amendment shall be construed to apply outside United States territory as a matter of DoD policy.

ELEMENTS OF MISDEMEANOR CONVICTION OF DOMESTIC VIOLENCE

A person shall not be considered as having committed a "misdemeanor crime of domestic violence" for purposes of the firearms restriction recently added to the Gun Control Act unless all of the following six elements are present:

- the person was convicted of a misdemeanor crime;
- the offense had as an element the use or attempted use of physical force, or threatened use of a deadly weapon;
- the convicted offender was at the time of the offense:
 - ⇒ a current or former spouse, parent or guardian of the victim,
 - ⇒ a person with whom the victim shared a child in common,

⇒ a person who was cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or

⇒ a person who was similarly situated to a spouse, parent, or guardian of the victim;

- the convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel;
- if entitled to have the case tried by jury, the case was actually tried by a jury or the person knowingly and intelligently waived the right to have the case tried by a jury, and;
- the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense or had civil rights restored, unless the pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess, or receive firearms.